

# Press Release

Inter-American Court of Human Rights

I/A Court H.R.\_PR-08/2023 English

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## I/A Court H.R. Protecting Rights

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### **MEXICO IS RESPONSIBLE FOR VIOLATIONS OF PERSONAL LIBERTY AND THE PRESUMPTION OF INNOCENCE DUE TO THE APPLICATION OF 'ARRAIGO' AND PREVENTIVE DETENTION**

*San José, Costa Rica, January 27, 2023.* In the judgment in the *Case of Tzompaxtle Tecpile et al. v. Mexico*, notified today, the Inter-American Court of Human Rights declared the State of Mexico responsible for the violation of the rights of humane treatment, personal freedom, judicial guarantees, and judicial protection committed against Jorge Marcial Tzompaxtle Tecpile, Gerardo Tzompaxtle Tecpile and Gustavo Robles López in the context of their detention and deprivation of liberty, as part of the criminal proceedings against them.

Mexico partially recognized its international responsibility for the violation of the rights identified by the Inter-American Commission in its Merits Report and signed a Memorandum of Understanding with the victims' representatives.

Consult the official summary of the Judgment [here](#) and the full text of the Judgment [here](#).

The victims were detained on January 12, 2006, on the Mexico-Veracruz highway when their car broke down, after an approaching police patrol searched their vehicle and found evidence that was considered to be incriminating and possibly related to organized crime. For two days they were interrogated and held incommunicado. Subsequently, a measure known as *arraigo* (preventative detention) was ordered, which entailed their confinement for more than three months until the opening of criminal proceedings was decreed by the trial judge. The victims were held in preventive detention for a period of approximately 2 and a half years. On October 16, 2008, the final judgment was pronounced acquitting the victims of the crime of violating the Federal Law Against Organized Crime in the form of terrorism, and on the same day, they were released.

This case dealt with the analysis of two concepts that are established in Mexican regulations: *arraigo* and pretrial detention.

Regarding the *arraigo*, established in Article 12 of the Federal Law against Delinquency of 1996 as well as in Article 133 bis of the Federal Code of Criminal Procedure of 1999, the Court considered that, because it is a pre-trial measure restricting freedom for investigative purposes, it was contrary to the Convention, in particular, it violated per se the rights to personal liberty and the presumption of innocence of the person under arrest. It also concluded that the State violated its obligation to adopt provisions of domestic law contained in Article 2 of the American Convention in relation to the right not to be arbitrarily detained, to judicial control of detention and the reasonableness of the period of preventive detention, to be heard, to the presumption of innocence and not to testify against oneself, to the detriment of Jorge Marcial and Gerardo Tzompaxtle Tecpile, and Gustavo Robles López for the application of said concept in this specific case.

As for pretrial detention, which was applied in this case and was provided for in Article 161 of the 1999 Federal Code of Criminal Procedure, it was, per se, contrary to the American Convention

because it did not mention the purpose of the pre-trial detention, nor the procedural risks that it would seek to prevent, nor the requirement to carry out an analysis of the need for this measure as compared to others that are less harmful to the rights of the person prosecuted, such as alternatives to detention. In addition, the aforementioned article establishes the mandatory application of pretrial detention for particularly serious crimes once the material assumptions have been established, without carrying out an analysis of the need for preventative measures in the particular circumstances of the case. To this extent, the Court concluded that the State violated the right not to be arbitrarily detained, to judicial control of detention, and to the presumption of innocence to the detriment of the victims.

The Court also indicated that the conditions of solitary confinement and isolation in which the victims were detained under the concept of *arraigo* violated their right to humane treatment, and that the search of their vehicle violated the right to private life. Finally, the Court stated that the State was responsible for a violation of the right to private life to the detriment of Gerardo Tzompaxtle Tecpile, and Jorge Marcial Tzompaxtle Tecpile for the searches carried out at their mother's house, as well as at a store that was the family business.

Due to the violations stated in the judgment, the Court ordered various reparation measures: (a) to annul the provisions related to the pre-trial nature of *arraigo* in its domestic law, (b) adapt its domestic legal system on preventive detention, (c) publish and distribute the Judgment and its official summary, (d) carry out a public act of acknowledgment of international responsibility, (e) provide medical, psychological, psychiatric or psychosocial treatment to the victims who request it, and (f) pay the amounts established in the Judgment for costs and expenses.

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The composition of the Court for the issuance of this judgment was as follows: Ricardo C. Pérez Manrique, President (Uruguay), Humberto Antonio Sierra Porto, Vice President (Colombia), Nancy Hernández López, Judge (Costa Rica), Verónica Gómez, Judge (Argentina), Patricia Pérez Goldberg, Judge (Chile), and Rodrigo Mudrovitsch, Judge (Brazil).

Judge Eduardo Ferrer Mac-Gregor Poisot, a Mexican national, did not participate in the proceedings in this case, nor in the deliberation and signing of this judgment, in accordance with the provisions of Articles 19(1) and 19(2) of the Court's Rules of Procedure.

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